Bill to combat right-wing extremism and hate crime

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In October 2019, the *Bundesministerium der Justiz und für Verbraucherschutz* (Federal Ministry of Justice and Consumer Protection) announced a bill designed to combat right-wing extremism and hate speech on the Internet (IRIS 2020-1:1/9). The *Entwurf für ein Gesetz zur Bekämpfung des Rechtsextremismus und der Hasskriminalität* (Draft Act to combat right-wing extremism and hate crime) was published on 18 December 2019. Among other things, the bill tightens the provisions of the *Netzwerkdurchsetzungsgesetz* (Network Enforcement Act – NetzDG) that require social networks to proactively provide access to user data or transmit such data to the authorities. The bill includes amendments to the *Strafgesetzbuch* (Criminal Code – StGB), *Strafprozessordnung* (Code of Criminal Procedure – StPO), *Bundeskriminalamt-Gesetz* (Federal Criminal Police Office Act – BKAG), *Telemediengesetz* (Telemedia Act – TMG) and *NetzDG* in order to combat the growth of extreme right-wing and illegal online content. As regards changes to criminal law, insults made in public or through the dissemination of written texts will, in future, be subject to heavier punishments, while courts will be able to impose harsher sentences for offences with anti-Semitic motives. The bill also explains that the special protection afforded to politicians against defamation and slander also applies at local level. The amendments to the StPO, BKAG and TMG, on the other hand, are aimed at improving law enforcement in the online sector. Providers of commercial telemedia services and associated contributors and intermediaries will, in future, be subject to the same information obligations as telecommunications services. A new Article 15a TMG obliges them to disclose information about their users' inventory data if requested by the Federal Office for the Protection of the Constitution, law enforcement or police authorities, the *Militärische Abschirmdienst* (Military Counterintelligence Service), the *Bundesnachrichtendienst* (Federal Intelligence Service) or customs authorities. To this end, they are required, at their own expense, to make arrangements for the disclosure of such information within their field of responsibility. Services with over 100 000 customers must also provide a secure electronic interface for this purpose. Social network providers, meanwhile, are subject to proactive reporting obligations. They are already required under existing law to provide users with an effective, transparent complaints procedure for reporting illegal content. In a new Article 3a NetzDG, the bill now obliges them to forward such complaints to the *Bundeskriminalamt* (Federal Criminal Police Office – BKA) via an electronic interface if they have removed or blocked such content and if there are concrete indications that a specific crime has been committed (Articles 86, 86a, 89a, 91,

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126, 129 to 129b, 130, 131, 140, 184b, 184d, 241 StGB), such as the dissemination of propaganda or the use of symbols of unconstitutional organisations. The provider must check whether this is the case and report the content immediately, as well as provide the IP address and port number of the person responsible. The user “on whose behalf the content was stored” should be informed that the information has been passed on to the BKA, unless the BKA orders otherwise. The latter provision in particular has attracted criticism that had previously been directed at the NetzDG in relation to the fact that the platforms’ obligations to check content require them to carry out tasks that are closely associated with basic rights and which are a fundamental responsibility of the state.

Entwurf für ein Gesetz zur Bekämpfung des Rechtsextremismus und der Hasskriminalität

https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/RefE_BekaempfungHatespeech.pdf;jsessionid=89F4BD0FFB182DE2C5F3DE2630A6C2F3.2_cid334?__blob=publicationFile&v=1

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